

## REMARKS

This paper is responsive to the final Office Action mailed February 18, 2010. Applicant has carefully reconsidered the claim rejections and the comments provided in the Office Action. The claim rejections, however, appear to be in error as they are not supported by the disclosure in the cited art. Therefore, applicant respectfully traverses the claim rejections and requests withdrawal of the same.

Claims 1-48 are pending in the application. Reconsideration of the following issues is requested:

1. Whether Claims 17-22, 37-39, 41, and 42 are properly rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0014379 ("Saías");

2. Whether Claims 1, 23, and 43 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0004774 ("Defarlo")<sup>1</sup> in view of U.S. Patent No. 6,317,728 ("Kane"); and

3. Whether Claims 2-16, 24-36, and 40 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Defarlo and Kane in view of Saías.<sup>2</sup>

With this response, only a minor amendment has been presented with respect to Claim 37 (replacing "tangible" with "non-transitory") to conform to current practice of the U.S. Patent and Trademark Office (see "Subject Matter Eligibility of Computer Readable Media," David J.

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<sup>1</sup> The Office Action frequently refers to "Defario." Applicant interprets these references to instead refer to "Defarlo." Further, applicant does not concede that Defarlo or Saías are prior art to the claims of the present application, and thus reserves the option to antedate Defarlo and Saías under 37 C.F.R. § 1.131 if needed.

<sup>2</sup> In the section of the Office Action on pages 7-13, the Office also rejected Claim 1 as allegedly being unpatentable over Defarlo and Kane in view of Saías, but did not address Claim 1. Instead, Claim 1 was addressed in the section on pages 5-6. Applicant thus interprets this latter section of the Office Action as applying to Claims 2-16, 24-36, and 40.

Kappos, January 26, 2010). No other claims have been amended, added, or canceled. Entry of the amendment and allowance of the application after final is proper.

#### Interview Summary

Before discussing in detail the above-noted issues, the undersigned counsel thanks Examiner Oyesbisi for his courtesy in a telephone interview conducted on April 20, 2010. During the interview, the undersigned counsel and Examiner Oyesbisi discussed the cited Saias, Defarlo, and Kane references, and the features of the claims of the present application that distinguish the claims over the cited art. In particular, the deficiencies of the cited art were acknowledged and understood. It was agreed that applicant would formally submit the present remarks for consideration, upon which the Examiner would conduct a further search to confirm the patentability of the claims.

#### Whether Claims 17-22, 37-39, 41, and 42 are Properly Rejected Under 35 U.S.C. § 102(e) as Being Anticipated by Saias

Applicant respectfully submits that Saias does not support a *prima facie* anticipation rejection of Claims 17-22, 37-39, 41, and 42. The claim rejections are in error for at least the following reasons.

#### Claim 17

Claim 17 recites a computer-implemented method of facilitating trading. The method as claimed includes, in part, "automatically . . . receiving a designation of anonymous from a first trading process" and "automatically . . . facilitating a trade between the first trading process and a second trading process by providing the second trading process with a rating for the first trading process, *wherein the second trading process remains unaware of the identity of the first trading process and yet is able to obtain, from the market process, a rating for the first trading process, and wherein the rating is descriptive of the first trading process as a trading party.*" (Emphasis added.)

At a minimum, Saias fails to teach or suggest the above-noted claim elements. Indeed, as applicant has explained in prior responses, Saias teaches away from these elements.

To understand this point, as discussed with the Examiner in the interview, it is first helpful to review the disclosure of Saias. The Office Action relied on Saias for teaching an "automated market." See Saias at page 21, paragraph [0306]. As explained by Saias at paragraphs [0307], [0308], and [0311]:

The [automated market] AM 108 operates to automate the exchange of resources among entities. Further, AMs 108 provide the mechanism by which transactions linking activities in processes are coordinated and algorithmic procedures based on computer models of the state of the firm optimize these transactions.

Without limitation, the Automated Market 108 will be described in the illustrative context of automated techniques for matching buyers and sellers of financial instruments.

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In the preferred embodiment, the AM 108 includes computational agents which are programmed to act as surrogates for economic agents including human beings. This preferred embodiment represents the most direct translation from actual marketplaces within an economy to the automated market 108, a market emulation model.

Further, at paragraphs [0317]-[0319] and [0326], Saias explains:

In the preferred embodiment, the AM 108 receives trading preferences computed by the economic agents and an optimization engine within the AM 108 finds the trade which maximizes the preferences of the participating economic agents. Specifically, the AM 108 allows economic agents such as organizations and firms to anonymously submit terms of a favorable exchange. Upon receipt of the trading preferences from the economic agents, the AM 108 reconciles compatible buyers and sellers. All of the terms that need to be negotiated are specified privately in a manner that incorporates the flexibility and often non-comparable utilities of the organization. Further, none of the surfaces will be available for inspection or analysis by any other market participant, or any third party. Since the AM 108 has the ability to receive preferences from economic agents which privately specify the range over which they are flexible on various terms, the present invention allows the negotiation process to be automated without publicizing the internal state of the participating economic agents.

For the exchange of goods, these terms include price and quantity. Optionally, the terms could further include exchange location, exchange time, quality/purity descriptors, the current sequence of contracts, sales offers, and purchase offers and the future sequence of contracts, sales offers and purchase offers. For example, in the exchange of crude oil, the terms might include price, volume, delivery point, sulfur content, and specific gravity. The terms could also be contingent on the delivery of other contracts.

For the exchange of services, the terms include at least price and time. Further, the terms could also include other factors which are necessary to specify the service. For example, in the exchange of transportation services, the terms would include price, volume, weight, pickup time and location, and delivery time and location.

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As previously explained, the automated market 108 of the present invention can match buyers and sellers of stock portfolios. The optimization task is to maximize the joint satisfaction of buyers and sellers of stock portfolios. In other words, the optimization task determines the prices of all stocks involved in the transaction which will maximizing the joint satisfaction of the buyers and sellers.

As can be seen from the disclosure of Saias, the automated market seeks to maximize the joint satisfaction of buyers and sellers. Each of the buyers and sellers submit various terms to the automated market in order to make a trade. The terms, or "trading preferences," are subject to negotiation and if the automated market can reconcile compatible buyers and sellers and maximize their joint satisfaction based on the submitted terms, a trade may be consummated.

In the Response to Arguments section of the Office Action (page 17), the Examiner contended:

Clearly, SAIAS disclosure that "the AM 108 allows economic agents such as organizations and firms to anonymously submit terms of a favorable exchange. Upon receipt of the trading preferences from the economic agents, the AM 108 reconciles compatible buyers and sellers", constitutes the applicants limitation in claim 17 "wherein the second trading process obtains a preference rating from a market process for the first trading process while being unaware of the identity of the first trading process."

Aside from not accurately quoting the language of Claim 17, the Examiner's reliance on Saias is misplaced. The terms, or "trading preferences," of Saias describe what is being traded,

for example, the price and quantity of the items(s) being traded. The trading preferences of Saias are not "descriptive of the first trading process as a trading party," as claimed in Claim 17. Stated otherwise, the trading terms or preferences according to Saias do not constitute "a rating for the first trading process," as claimed in Claim 17, "wherein the rating is descriptive of the first trading process as a trading party."

The assertion on page 16 of the Office Action that organizations and firms in Saias can "anonymously submit terms of a favorable exchange" has no bearing on the patentability of Claim 17. Claim 17 does not concern anonymous submission of trading terms for an exchange.

Rather, in Claim 17, a first trading process can be designated "anonymous" and a second trading process is provided with a rating for the first trading process, "wherein the second trading process remains unaware of the identity of the first trading process." While in this embodiment the identity the first trading process is protected, the second trading process is still provided with a rating. The rating is "descriptive of the first trading process as a trading party;" it is not a price or quantity of the item(s) being traded as according to Saias.

On page 17, the Office Action further contended:

Further, contrary to the applicant's assertion that SAIAS terms are not directed to who is on the other side of the trade, the examiner asserts that SAIAS terms are directed to economic agents such as organizations and firms that engage in trade/exchange with one another. The applicant needs to understand that the party on the other side of the trade is either a buyer or a seller, and a party on one side of the trade is trading/exchanging with another party on the other side of the trade. So if this is true, SAIAS discloses economic agents that set preferences and based on these preferences the system reconcile compatible economic agents (i.e., buyers and sellers) - see SAIA above

Applicant respectfully understands that the party on each side of the trade is either a buyer or a seller, and that the parties to the trade are trading/exchanging with each other. But applicant also contends that this argument has no bearing on the patentability of Claim 17.

According to Saias, the trading terms that are received by the automated market from buyers and sellers are *not communicated between the parties*. The trading terms, according to

Saias, form multi-dimensional "preference surfaces" (see, e.g., paragraph [0320]) which are not disclosed to the respective parties in the trade. As explained at paragraph [0317] of Saias (cited in the Office Action at page 3 and again at pages 16-17), Saias teaches "*none of the surfaces will be available for inspection or analysis by any other market participant, or any third party.*" This disclosure of Saias not only fails to teach or suggest the subject matter claimed in Claim 17, it also teaches away from the subject matter of Claim 17. According to Claim 17, the second trading process is provided with information concerning the party on the other side of the trade, namely, "a rating for the first trading process."

Furthermore, the terms or "trading preferences" of Saias do not describe either party as a trading party. Instead, as noted above, the trading terms refer to price and quantity, for example, and thus describe the item(s) to be traded. The economic agents of Saias may set the trading preferences for item(s) that they wish to trade, but the trading preferences do not constitute "a rating for the first trading process," as claimed in Claim 17, where "the rating is descriptive of the first trading process as a trading party."

In addition, Claim 17 recites "wherein the rating is based on a statistical analysis of the outcome of prior trades between the first and second trading processes." Other than broadly cite paragraphs [0310]-[0311] and [0317] of Saias, the Office Action did not specifically identify which portion(s) of Saias allegedly disclose the above-quoted feature of Claim 17. It is not clear from the disclosure of Saias how or where Saias looks at the outcome of prior trades between the first and second trading processes, let alone conducts a statistical analysis of the outcome of the prior trades. Applicant submits that Saias does not teach a "rating [that] is based on a statistical analysis of the outcome of prior trades between the first and second trading processes."

As discussed with the Examiner in the telephone interview and repeated above, Saias fails to teach or suggest all of the elements of Claim 17. The Office Action has not shown a *prima facie* basis for rejecting Claim 17 as being anticipated by Saias, and therefore the rejection of Claim 17 should be withdrawn.

### Claim 18

Saias fails to teach or suggest all of the elements of Claim 18, including "a preference rating updating process," as claimed. Saias also does not teach or suggest "a software process being a first market participant" that decides "whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference rating updating process, the preference rating being descriptive of the second market participant as a trading party," wherein "the trade results in an exchange of items between the market participants."

With respect to Claim 18 (as well as Claim 17), the Office Action cited paragraphs [0310]-[0311], [0317]-[0318], and [0307]-[0308] of Saias, but these paragraphs teach nothing about a first market participant deciding whether to trade with a second market participant based on a preference rating of the second market participant. In fact, Saias *teaches the contrary*.

The automated market AM 108 taught by Saias receives trading terms from different parties and arranges trades while keeping information received from the parties private:

Further, *none of the surfaces will be available for inspection or analysis* by any other market participant, or any third party. Since the AM 108 has the ability to receive preferences from economic agents which *privately specify* the range over which they are flexible on various terms, the present invention allows the negotiation process to be automated without publicizing the internal state of the participating economic agents. (See Saias at paragraph [0317]; emphasis added.)

According to Saias, terms for a trade, or "trading preferences," obtained from one market participant are not shared with any other market participant. In contrast, according to Claim 18 of the present application, the first market participant is given the preference rating of the second market participant so that the first market participant can determine whether to trade with the second market participant based on the preference rating.

Moreover, the preference rating in Claim 18 is "descriptive of the second market participant as a trading party." (Emphasis added.) On the other hand, Saias explains at paragraph [0318] that the trading terms or "preferences" are terms for negotiation and include price, quantity, and other characteristics based on *what* (i.e., the item) is being traded.

Additionally, according to Claim 18 (in contrast to Saias), "the information provided to the preference rating updating process is derived from analyzing the outcome of prior trades between the first and second market participants." The Office Action did not identify what portion(s) of Saias allegedly disclose this feature of Claim 18. Applicant submits that Saias does not teach "information provided to [a] preference rating updating process [that] is derived from analyzing the outcome of prior trades between the first and second market participants."

As discussed in the telephone interview, the teachings of Saias either fail to disclose or are contrary to that which is taught and claimed in Claim 18. For at least the foregoing reasons, Claim 18 is patentably distinguished over Saias and the rejection of Claim 18 should be withdrawn.

#### Claims 19-22

Claims 19-22, which depend from Claim 18, incorporate the elements of Claim 18 and thus are patentably distinguished over Saias for at least the reasons discussed above. Claims 19-22 also present additional subject matter that defines the claims over Saias. For at least these reasons, the rejection of Claims 19-22 should be withdrawn.

#### Claim 37

Claim 37 is directed to a non-transitory computer-accessible medium having executable instructions stored thereon that, in response to execution by a computing device, cause the computing device to undertake actions similar to those described in Claim 18. These actions include "automatically provid[ing] information to a preference rating updating process" and "automatically decid[ing], as a first market participant, whether to trade with a second market participant based on a preference rating of the second market participant determined by the



preference rating updating process, the preference rating being descriptive of the second market participant as a trading party." The information provided to the preference rating updating process "is derived from analyzing the outcome of prior trades between the first and second market participants."

For at least reasons similar to the reasons presented above for the patentability of Claim 18, applicant submits that Claim 37 is patentable over Saias. Saias fails to teach or suggest a computer-accessible medium as recited in Claim 37. Applicant therefore requests withdrawal of the rejection of Claim 37.

#### Claims 38, 39, 41, and 42

Claims 38, 39, 41, and 42 depend from Claim 37 and thus incorporate all of the patentable features of Claim 37. Moreover, Claims 38, 39, 41, and 42 are patentably distinguished over Saias for the additional subject matter they recite. Withdrawal of rejections of Claims 38, 39, 41, and 42 is merited.

#### Whether Claims 1, 23, and 43 are Properly Rejected Under 35 U.S.C. § 103(a) as Being Unpatentable Over Defarlo in View of Kane

In the above-mentioned telephone interview, the undersigned counsel and the Examiner also discussed the disclosures of the Defarlo and Kane references as cited in the Office Action. It was acknowledged in the interview that Defarlo and Kane do not support a *prima facie* obviousness rejection of Claims 1, 23, and 43. The claim rejections are in error and should be withdrawn.

#### Claim 1

Claim 1 is directed to a method of facilitating trading that includes "automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged," and "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the market participants is descriptive

of the market participant as a trading party and is based on the outcome of trading between the two market participants." At a minimum, Defarlo and Kane fail to teach or suggest the above-noted elements of Claim 1.

The Office Action alleged that Defarlo discloses "automatically determining . . . whether each of the market participants has gained money (i.e., a win) or lost money (i.e., a loss) from the trade in which they engaged," citing the abstract and summary of Defarlo. However, after reviewing the abstract and summary of Defarlo, and indeed the entire disclosure of Defarlo, applicant disagrees.

As indicated in the abstract, Defarlo discloses a "data analysis system [that allows] traders of equities and other financial instruments to keep track of their trading history and to display a trade profile of their trading behavior." According to Defarlo:

Trade results are analyzed by correlating trade transactions records with concurrent market conditions, categorizing the conditions, and appending condition data to the trade transaction record. The results are then displayed to *the trader* in the form of pivot tables and graphs. . . . In addition to collecting trade results for *individual traders*, data is aggregated based on the trader's organization so management of the firm can determine what strategies offer the best profitability or chance of success for most of the firm's traders. (See abstract; emphasis added.)

As can be seen above, Defarlo describes a system that calculates certain trade statistics for a trader or firm of traders on *only one side* of the trades in which they engage. This does not constitute "automatically determining from the captured data whether each of the market participants [in a trade] has gained money or lost money from the trade in which they engaged," where "one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller," as claimed in Claim 1. (Emphasis added.) In other words, Claim 1 involves capture and review of data for both sides of a trade between the buyer and the seller in the trade.

The Office Action (page 14) referred to portions of paragraphs [0079]-[0080] of Defarlo, where Defarlo explains:

The data analysis system 10 then calculates what the open positions of **the trader** were for the date being studied and recreates the fluctuations in **the trader's** profit & loss in user-defined intervals, i.e. 5 minutes. Certain data about **the trader's** performance 32 is captured during this simulation and recorded in a multidimensional database 34. This trader performance data includes maximum and minimum P&L (profit and loss), maximum and minimum P&L times, P&L at the opening of the market, actual P&L, capital utilization and shares traded.

After all analysis is finished, the data analysis system 10 takes the trade records and restructures the data into a standard multidimensional database 34. This allows correlations of profit & loss, win ratio and a number of other measures to be made against any of the factors listed above. As the system 10 builds a trade database 10 over time, a profile of trading behavior for each user will be created. Users, i.e. **individual traders or management of trading firms**, will be able to see what factors are typically present when traders win and what factors have led to losing trades. (See paragraphs [0079]-[0080]; emphasis added.)

The Office Action thereafter asserted "that a data analysis system, as taught by Defarlo, performs the calculation of market participant's winning and losing positions (see paragraph[0079])." This argument is, however, not commensurate with the scope of Claim 1. It is telling that in all instances of Defarlo's disclosure, as well as in the Office Action, that the trading positions are tracked only for *individual* market participants or traders. Even in cases where the system may be used by multiple traders in a firm, it is the individual traders' side of the trades that is tracked.

According to Claim 1, "the captured data includes data regarding the trade for both the buyer side and seller side of the trade." (Emphasis added.) In contrast, Defarlo tracks data on only one side of a trade. Defarlo does not track data for both sides of a trade. More specifically, the system of Defarlo does not gather any data on which it can determine if contra-parties to the trades of the individual trader(s) also gained or lost money in the respective trades.

Accordingly, contrary to the assertion made in the Office Action, Defarlo does not disclose "automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged," where the data captured is "regarding a trade between two market participants that are each parties to the

trade." (Emphasis added.) At most, the system of Defarlo only correlates a profit or loss for an individual trader for only his or her side of a trade.

In this regard, attention should also be given to at least paragraph [0010] as well as paragraphs [0017] and [0018] of Defarlo where Defarlo consistently refers to individual traders. In paragraph [0010], Defarlo explains:

It is an object of the present invention to provide a data analysis system which imports technical and fundamental financial data and correlates that data to the trading history of **an individual trader**.

Again, it is evident that Defarlo's process, at best, calculates trade information for *an individual trader or traders* on only one side of a trade. Even if one supposes, for the sake of argument, that two different parties who engaged in a trade separately execute Defarlo's process for their respective side of the trade, the result remains that Defarlo's process only computes statistics for the individual trader on their particular side of the trade. There is no reasonable reading of Defarlo that suggests Defarlo discloses "automatically capturing data regarding a trade between two market participants that are each parties to the trade" and "automatically determining from the captured data whether each of the market participants has gained money or lost money from the trade in which they engaged," as set forth in Claim 1. (Emphasis added.)

The disclosure of Kane does not overcome the above-noted deficiencies of Defarlo. Accordingly, for at least these reasons, Defarlo and Kane do not provide a *prima facie* basis for rejecting Claim 1.

Applicant further submits that Kane (as well as Defarlo) fails to teach or suggest "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the market participants is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants," as claimed in Claim 1. The Office Action (page 6) cited Kane for allegedly disclosing this element of Claim 1. However, after carefully considering the disclosure of Kane, applicant must respectfully disagree.

Kane discloses a computerized system with "agents" that provide trading "suggestions" or "recommendations" to *a trader on one side of a trade* to help the trader make a *future decision* whether to enter into a trade. In an automated embodiment, the trader is an "executing device 11" as shown in Figure 1. The "suggestions" or "recommendations" are taken as "votes" toward an ultimate decision by the executing device 11 whether to trade, and if so, whether to buy or sell. See, e.g., Col. 5, lines 35-55, of Kane.

Depending on available information, the agents make a buy or sell suggestion to the trader based on the respective rules that they represent (see Col. 5, lines 5-15, of Kane). Suggestions from each individual agent to the trader are considered to be votes for a possible action that the trader may undertake (see Col. 5, lines 37-48, of Kane). Depending on the outcome of the votes from the various agents, the trader may decide to send an order to a marketplace (see Col. 5, lines 49-55, of Kane).

Applicant maintains that the plurality of agents disclosed by Kane do not constitute "market participants" in the context of Claim 1. The Office Action, however, continues to consider this argument as "inaccurate." In this regard, the Office Action (page 15-16) stated:

Kane discloses a trading system wherein decision agents are set up to make a buy or sell decision based on their respective rules (col. 5, lines 5-15, also see col. 15, lines 5-20), each agent in Kane is a market participant. Thus, when an agent makes a buy decision, that agent is a buyer in the market, and when an agent makes a sell decision that agent is a seller in the market regardless of which side of the market the agents are on.

Applicant first submits that the above-stated position is not commensurate with the language of Claim 1. As recited in Claim 1, "market participants" are "each parties to the trade, . . . wherein one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller." As further recited in Claim 1, "the trade results in an exchange of items between the market participants."

The plurality of agents taught by Kane do not engage in a trade at a market. The agents only provide buy or sell suggestions or recommendations to a trader. It is immaterial whether the trader is automated in the form of an "executing device 11" or is human. It is inaccurate for the Office Action (page 16) to state "when an agent makes a buy decision, that agent is a buyer in the market." It is clear from the disclosure of Kane that any buy decision made by an agent is not submitted to a market, such that the agent becomes a party to a trade in which items are exchanged. Rather, when an agent makes a buy decision, that buy decision is provided as a vote to a trader (automated or human) who, based on the votes received, determines whether to agree or disagree with the agent's buy decision. Even if the trader ("executing device 11") agrees with the buy decision of the agent or acts on a majority of the votes received from all the agents, the trader is still the party that places the order in the market, not any one of the individual agents.

A similar analysis applies when an individual agent of Kane makes a sell decision. That sell decision is provided as a vote to the trader who separately evaluates the vote with other votes received and determines whether to agree or disagree with the agent's sell decision.

Additionally, as noted above and discussed in the telephone interview, Kane's agents do not exchange items with any other agents as a result of a trade. It is simply incorrect for the Office Action to consider Kane's agents as constituting "market participants" in the manner set forth in Claim 1.

This deficiency of Kane is not overcome by the disclosure of Defarlo (or Saias). For at least these additional reasons, the obviousness rejection of Claim 1 should be withdrawn.

As further drawn out in the telephone interview, Kane's system only keeps track of data on its own side (buy or sell) of a trade. Each trader only knows whether his or her own side has gained or lost money from the trade; there is no tracking of whether the contra-side of the trade also gained or lost money from the trade. Accordingly, while not alleged in the Office Action, applicant confirms that Kane does not teach or suggest "automatically determining from the

captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged."

Applicant additionally submits that none of the cited references teaches or suggests "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade," as claimed in Claim 1, "wherein the rating . . . is based on the outcome of trading between the market participants."

The Office Action (page 6) expressly conceded that "Defarlo fails to disclose automatically updating a preference rating for each of the market participant[s] based on the determination of whether money was gained or lost from the trade." Instead, the Office Action relied on Kane as allegedly teaching this element of Claim 1. Applicant disagrees.

To the extent a trader using Kane's system, at the conclusion of the trade, updates "merit quotients" to rate his or her own agents for their prior votes to buy or sell, these merit quotients are not "rating[s] for each of the two market participants," as recited in Claim 1. Kane's agents do not exchange items with other agents as a result of a trade. They only provide buy or sell votes to the trader. It is therefore incorrect for the Office to consider Kane's agents as "market participants."

In this regard, the Office Action cited Col. 8, lines 35-67, of Kane. As explained at lines 35-49:

Once a position is exited, the position is categorized as a win or a loss, and the agents that voted for the position are either rewarded or punished, while the agents that voted against the position are also rewarded or punished. Each agent's track record for each equity is recorded. If the agent is consistently wrong, the agent becomes a double agent, voting long if it is a short agent or short if it is a long agent. The system monitors the success rate and failure rate of each agent and grants each a cumulative merit quotient according to the cumulative rate of success and/or failure for the respective agent. This merit quotient controls the power the agent wields in subsequent voting. It should be noted that agents that only fire occasionally but that are highly accurate carry more weight than agents that fire many times but are less accurate.

As can be seen above, some of Kane's agents may have voted for a position ultimately taken by the trader, and some of Kane's agents may have voted against the trader's position. Each of Kane's agents will be "rewarded or punished" for their respective votes, depending on the outcome of the trader's position. Nevertheless, as discussed in the telephone interview, none of Kane's agents are parties to the trade. Only the trader is engaged in the trade. The trader, whether automated or human, is simply being advised by the votes of each agent.

For at least these further additional reasons, applicant respectfully submits that Claim 1 is patentable over Defarlo and Kane, whether considered alone or in combination.

In summary, where Defarlo and Kane both individually and collectively fail to teach or suggest all of the elements of Claim 1, there is no combination of the references that renders Claim 1 obvious. The rejection of Claim 1 should be withdrawn.

The Office Action (page 6) did not address Claims 23 and 43 in any detail. Rather, Claims 23 and 43 were rejected "using the same art and rationale as in claim 1." Applicant has shown above that Claim 1 is not obvious in view of Defarlo and Kane. Accordingly, for similar reasons, applicant submits that Defarlo and Kane both individually and collectively fail to teach or suggest all of the elements of Claims 23 and 43 in a manner that renders Claims 23 and 43 obvious. The rejections of Claims 23 and 43 should be withdrawn.

Whether Claims 2-16, 24-36, and 40 are Properly Rejected Under 35 U.S.C. § 103(a) as Being Unpatentable Over Defarlo and Kane in View of Saias

Applicant submits that Defarlo and Kane in view of Saias do not support a *prima facie* obviousness rejection of Claims 2-16, 23-36, 40, and 43-48, for at least the following reasons.

Claims 2-16

By dependence, Claims 2-16 incorporate all the features of Claim 1. As discussed above, Defarlo and Kane both individually and collectively fail to teach or suggest all of the elements of Claim 1. Therefore, there is no combination of Defarlo and Kane that renders Claims 2-16 obvious.



Saias, for its part, does not make up for the deficiencies of Defarlo and Kane discussed above. Saias merely teaches an automated market that seeks to reconcile trading preferences of buyers and sellers. As noted earlier, each of the buyers and sellers submit various terms to the automated market to be negotiated in order to make a trade. If the automated market can reconcile compatible buyers and sellers and maximize their joint satisfaction based on the submitted terms, a trade may be consummated. These features of Saias, however, are insufficient to overcome the above-discussed deficiencies of Defarlo and Kane.

To the extent Saias was cited as a basis for rejecting the claims dependent on Claim 1, it is notable that Saias fails to teach or suggest "a rating for each of the two market participants . . . , wherein the rating for each market participant is descriptive of the market participant as a trading party," as claimed in Claim 1. Accordingly, Saias does not support a rejection of Claims 2-16 inasmuch as they further recite features pertaining to "the rating" recited in Claim 1.

Each of Claims 2-16 is distinguished over Defarlo, Kane, and Saias. Therefore, the rejections of Claims 2-16 should be withdrawn.

#### Claims 24-36

Claims 24-36, which incorporate all the features of Claim 23 by dependence, are also patentable over Defarlo, Kane, and Saias, for at least the same reasons that Claim 23 (and Claim 1) are patentable. Additionally, each of Claims 24-36 is patentably distinguished over Defarlo, Kane, and Saias for the additional subject matter they recite.

For example, to the extent Saias was cited as a basis for rejecting the claims dependent on Claim 23, Saias teaches or suggests nothing about "a rating for each of the two market participants . . . , wherein the rating for each of the market participants is descriptive of the market participant as a trading party." Accordingly, Saias in combination with Defarlo and Kane

does not support a rejection of Claims 24-36 inasmuch as they further recite elements pertaining to "the rating" recited in Claim 23. For at least these reasons, the rejections of Claims 24-36 should be withdrawn.

Claim 40

Claim 40 is dependent on Claim 37 and thus incorporates all of the elements of Claim 37, discussed above. For at least this reason, and for the additional subject matter Claim 40 recites, the rejection of Claim 40 should be withdrawn.

Patentability of Claims 44-48


The Office Action did not address the elements of Claims 44-48, which are pending in the application. Therefore, applicant submits that the rejection of Claims 44-48 is in error and the claims should be allowed. Additionally, applicant submits that Claims 44-48 should be allowed for their dependence on Claim 43 and for the additional features they recite.

CONCLUSION

After careful review of the cited references, applicant respectfully submits that a *prima facie* case for rejecting Claims 1-48 has not been shown. Withdrawal of the claim rejections and allowance of the application is requested. Should any issues remain needing resolution, the Examiner is invited to contact the undersigned counsel at the telephone number indicated below.

Respectfully submitted,

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